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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91239589
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Date	02/12/2021
Attachments	Deposition Transcript and Exhibits of Don Rodgers.pdf(3613326 bytes)

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

MAKER'S MARK DISTILLERY, INC.,

Opposer,

v.

BOWMAKER'S WHISKEY COMPANY,

Applicant.

Opposition No. 91239589

Serial No. 87,383,989

Mark: BOWMAKER'S WHISKEY

NOTICE OF FILING TESTIMONY DEPOSITION OF DON RODGERS

Opposer Maker's Mark Distillery, Inc. ("Opposer"), by its undersigned attorneys and pursuant to 37 C.F.R. § 2.123 and 2.125 and TBMP § 703.01(k), hereby files with the United States Trademark Trial and Appeal Board the certified testimonial deposition transcript of Don Rodgers and accompanying deposition exhibits.

Dated: February 12, 2021

Maker's Mark Distillery, Inc.

By: /s/ Richard M. Assmus

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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Notice of Filing Testimony Deposition of Don Rodgers, was served via email on counsel for Applicant at the following addresses on February 12, 2021:

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/s/ Daniel P. Virtue

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Attorney

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Transcript of Don L. Rodgers

Date: January 26, 2021

Case: Maker's Mark Distillery, Inc. -v- Bowmaker's Whiskey Company

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1 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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3 MAKER'S MARK DISTILLERY,
4 INC.,

5 Opposer,

Opposition
No. 91239589

6 vs.

7 BOWMAKER'S WHISKEY COMPANY,

Serial No. 87/383,989
Mark:
BOWMAKER'S WHISKEY

8 Applicant.

9 DEPOSITION OF DON L. ROGERS

10 Conducted Virtually

11 January 26, 2021

12 Tuesday 9:00 a.m.

13
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19
20 STENOGRAPHICALLY REPORTED BY:

21 CHERYL L. SANDECKI, CSR, RPR

22 LICENSE NO.: 084-03710

23 JOB NO.: 348239
24
25

1 The deposition of DON L. ROGERS conducted
2 virtually.

3
4 Pursuant to notice, taken in the
5 above-entitled cause, before CHERYL L. SANDECKI,
6 Certified Shorthand Reporter of the State of
7 Illinois and Registered Professional Reporter.

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20 ALSO PRESENT:

21 Mr. Bryan Parks
22 Mr. Brian Krieger, Planet Depos Technician
23
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EXHIBITS

NUMBER	MARKED FOR ID
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(Exhibits provided and marked electronically.)

1 THE COURT REPORTER: Will counsel please
2 stipulate that in lieu of formally swearing in
3 the witness, the reporter will instead ask the
4 witness to acknowledge that their testimony will
5 be true under the penalties of perjury, that
6 counsel will not object to the admissibility of
7 the transcript based on proceeding in this way,
8 and that the witness has verified that he is, in
9 fact, Don Rodgers.

10 MR. ASSMUS: Yes.

11 MR. BREINER: Yes.

12 THE WITNESS: Yes.

13 THE COURT REPORTER: Sir, would you please
14 raise your right hand.

15 (Witness administered an oath.)

16 DON L. ROGERS,
17 having been first administered an oath, was
18 examined and testified as follows:

19 EXAMINATION

20 BY MR. ASSMUS:

21 Q. Good morning, Mr. Rodgers.

22 Could you state your full name for the
23 record.

24 A. Don L. Rodgers.

25 Q. Did you say L?

1 A. L, uh-huh, as in Louis. Don Louis
2 Rodgers.

3 Q. Great. Thank you.
4 Have you ever been deposed before?

5 A. I have.

6 Q. Okay. And under what circumstances was
7 that?

8 A. It was in a lawsuit.

9 Q. And what was the nature of the lawsuit?

10 A. Breach of contract.

11 Q. And were you the plaintiff, defendant,
12 neither?

13 A. Plaintiff.

14 Q. And what was the -- who were you suing?

15 A. Industrial Services Association, ISA,
16 scrap yard.

17 Q. Is that an employer of yours?

18 A. I was a consultant to them.

19 Q. And you sued them over a breach of your
20 consulting agreement?

21 A. Yes.

22 Q. I may come back to that. So if you've
23 been deposed before, some of this may -- may be
24 repetitive in terms of the ground rules. We're
25 trying to establish a written record, so you

1 need to answer orally, no nods, shakes. The
2 court reporter can't record nonverbal answers.
3 If we could try not to talk over each other,
4 it's even harder in the Zoom era than if we were
5 sitting face-to-face.

6 If you don't understand any question,
7 let me know and I'll try to reword it. As your
8 counsel, Mr. Breiner, mentioned if we need to
9 take a break, we're are happy to do that. Are
10 those rules all okay?

11 A. Yes.

12 Q. Any reason you can't provide your best
13 testimony today?

14 A. No.

15 Q. You said you were deposed in that
16 breach of contract case. Was that the only time
17 you've ever been deposed?

18 A. Yes.

19 Q. Have you ever testified at a trial?

20 A. No.

21 Q. Have you ever served as an expert
22 witness in a case?

23 A. That went to trial?

24 Q. Let's answer that first. Yes, that
25 went to trial.

1 A. No.

2 Q. Have you ever served as an expert
3 witness in any other case?

4 A. I have served as a consultant to people
5 who were maybe in -- preparing for a lawsuit.
6 They used my expert testimony -- I mean, expert
7 valuation. It usually would come about over
8 disputes about a value of a distillery.

9 Q. You would consider those -- the topic
10 of those consulting engagements financial
11 consulting?

12 A. Yes.

13 Q. Have you ever done any consulting in
14 connection with a lawsuit that related to
15 branding?

16 A. No.

17 Q. What about marketing?

18 A. A lawsuit, no.

19 Q. Back to your personal lawsuit against
20 your contractor, how was that case resolved?

21 A. I lost.

22 Q. Was that a loss at trial or before
23 trial?

24 A. I don't know. We met with a judge. We
25 had like -- I would call it a pretrial thing.

1 Q. And was that pending in Kentucky state
2 court?

3 A. Yes.

4 Q. Just -- just very briefly. What was
5 the nature of your beef with them in that
6 lawsuit?

7 A. They had promised me shares in their
8 company as long as I was employed by -- until --
9 until the end of the year. And they terminated
10 my employment on December 23rd. And so then
11 they said that my shares weren't -- I wasn't
12 there.

13 And, of course, our beef was it wasn't
14 because of me. And the judge used Peyton
15 Manning as an example -- the Indiana Colts, or
16 whatever their name is -- terminated his
17 contract and he had to work to such and such a
18 date. It just happened to be in the paper at
19 that time, and so he used that as a basis to
20 tell me that mine didn't.

21 Q. That was quite a Christmas present.

22 A. Yeah, it was.

23 Q. Okay. Thank you.

24 Turning back to your testimony here
25 today, did you discuss your -- this deposition

1 with anyone?

2 A. I have talked to Ted and I refreshed
3 my -- I talked to Bryan.

4 Q. Yeah.

5 Anyone else?

6 A. I have discussed it with a lot of
7 people in the industry.

8 Q. Okay. And who was that?

9 A. Other consultants.

10 Q. You've discussed this lawsuit with the
11 consultants or your declaration?

12 A. The whole thing, about what they think
13 about Maker's Mark and Bowmaker's being the same
14 thing.

15 Q. Okay.

16 A. I can say it's been universal that
17 nobody associated the two.

18 Q. Did you review any documents in
19 preparing for your deposition today?

20 A. I looked at my notes.

21 Q. And what notes are those?

22 A. Back when I talked to Bryan the first
23 time and I gave him an NDA, the dates of that.
24 I'm just trying to refresh myself.

25 Q. And when did you first talk to

1 Mr. Parks about anything?

2 A. You know what, I had it right here and
3 now -- here we go. Excuse me.

4 It looks like from my notes that I sent
5 him an NDA on July 8, 2016. And then we spoke
6 again on October the 3rd. So we spoke around
7 July, early July there, and I sent him an NDA,
8 which is pretty standard.

9 And then I told him what my services
10 were and he called me back and said that he
11 would like to engage me on October 3rd. And so
12 then I sent him a consulting agreement on
13 October 4th.

14 Q. And this is all 2016, those dates?

15 A. 2016, yes.

16 Q. Did the NDA get executed?

17 A. Yes.

18 Q. And the consulting agreement was
19 executed well?

20 A. Yes.

21 Q. Do you have any other agreements with
22 Mr. Parks?

23 A. No.

24 Q. Your -- are you compensated under your
25 consulting agreement by the hour or in some

1 other manner?

2 A. Set fee, one fee.

3 Q. And has Mr. Parks paid that fee?

4 A. Yes.

5 Q. And what was that fee?

6 A. \$3,000.

7 Q. And is your testimony here today part
8 of that consulting engagement?

9 A. Well, as I tell my clients, if you want
10 to engage me, I have a set fee and that fee
11 covers everything I do for you. And it has an
12 ending period of a year, just in case something
13 was to happen to me. But as long as I'm of
14 sound mind and you want to call me up, I'll be
15 glad to keep on consulting you. If you need a
16 new plan, well, then that would be a new
17 contract. But if you want to talk about
18 industry stuff, I'm fine talking to you.

19 Q. And do you consider your -- the
20 declaration you submitted in this case in your
21 testimony here today part of your consulting
22 arrangement with Mr. Parks?

23 A. Yes.

24 Q. Do you know how Mr. Parks found you?

25 A. I don't remember.

1 Q. Did you -- were you acquainted with
2 Mr. Parks prior to his July 8, 2016, reaching
3 out to you?

4 A. No.

5 Q. Could you describe generally the nature
6 of the services that you provide to -- strike
7 that.

8 Your consulting agreement, it's with
9 Bowmaker's Whiskey Company; is that right?

10 A. Yes, Bowmaker's Whiskey Company.

11 Q. And could you describe the nature of
12 your services that you provided Bowmaker's?

13 A. Well, it starts out with an interview.
14 So I have a client call me, like Bryan, and I
15 say, all right, what is it that you would like
16 to do, and let me see how I can put a plan
17 together for you to accomplish that.

18 So there's a lot of ways to get into
19 the whiskey business. You can be a virtual
20 brand, buy whiskey, you can build a distillery
21 of any size you want, and then the location
22 where you build it. All these factors play into
23 how I build your plan.

24 Q. So you helped Mr. Parks draft a
25 business plan for Bowmaker's Whiskey?

1 A. We never drafted one. I consulted him
2 and with what he told me that he wanted to do,
3 he wanted to be a virtual brand. He was not
4 going to build a distillery. He just wanted --
5 as I recall, he'd been to Scotland on a trip and
6 saw how they blended scotch over there. And he
7 wanted to blend whiskey together, bourbon, and
8 he asked what I thought about it. And I told
9 him I would do it in a very small portion
10 because I wouldn't want to ruin good whiskey
11 blending it. It's like mixing Coke and Pepsi,
12 so to be very careful about this blending, that
13 he could come up with something that wouldn't
14 taste very good.

15 Q. In connection with your engagement for
16 Bowmaker's, did you ever provide Bowmaker's or
17 Mr. Parks any written documents?

18 A. No -- nothing other than the NDA and
19 the contract. But, no, we never got a plan
20 together.

21 Q. Did you ever review any plan that
22 Mr. Parks had drafted?

23 A. No.

24 Q. Do you -- you said your consulting
25 agreement was a flat fee. But do you record how

1 much time you spend on each of your clients?

2 A. No.

3 Q. Do you --

4 A. I talk too much.

5 Q. Do you have an estimate of how many
6 hours you devoted to the engagement with
7 Bowmaker's?

8 A. No, not really. Wouldn't have an idea.
9 I mean, we had quite a few phone calls. But, I
10 mean, that was back in 2016, so I can't
11 remember.

12 Q. What -- what -- over what time period
13 were you -- did your services for Bowmaker's
14 cover?

15 A. Well, it started in July of 2016. And
16 I give -- I also gave Bryan a checklist of all
17 of the things to start a distillery, the
18 licenses he would require.

19 I have a guy who files TTB -- a
20 consultant that files TTB reports. And I may
21 have sent him that name, I don't recall.

22 I give him the names of some people
23 that he could buy whiskey from with what he was
24 trying to do.

25 Q. And would you say all of those services

1 were provided in the first -- in the first year
2 following your October 2016 contract?

3 A. Yes.

4 Q. And in taking the next year, like from,
5 say, October 2017 forwards, was there any work
6 for Bowmaker's before your most recent
7 declaration in this case?

8 A. Just some conversations about the
9 issues he was having getting licenses I think in
10 Michigan and getting his label approved. And
11 then, of course, when all this trademark stuff
12 came up, he asked me what I thought of that.

13 Q. And the checklist you mentioned, that's
14 something you have in writing that you give to
15 your clients?

16 A. Yes, uh-huh. It didn't apply to him
17 because he was just going to be a very small
18 virtual brand, I mean, making whiskey out of his
19 barn.

20 Q. Who was the person you referred him to
21 for the TTB reports?

22 A. If I did, it would have been Dave
23 Dunbar. I don't recall. You know, it was such
24 a long time ago, but that was my go-to
25 consultant on that category.

1 Q. And at the time Mr. Parks reached out
2 to you, he had already selected the name
3 Bowmaker's Whiskey, correct?

4 A. Yes. He had been using Bowmaker for --
5 because he makes bow and arrows, as he told me.
6 When he told me this name, that he wanted to
7 have Bowmaker's Whiskey, I asked him why because
8 I said what connotations does that have to --
9 what does a Bowmaker have to do with whiskey.
10 And so then he explained it to me, and I said
11 okay, fine, you need a story about your brand,
12 so that's your story.

13 Q. Was any of the services you gave
14 Bowmaker's Whiskey in the nature of branding
15 advice?

16 A. No.

17 Q. Any marketing advice?

18 A. No, other than it's going to be a lot
19 of work.

20 Q. You mentioned previously that you've
21 discussed this case with a number of other
22 people in the industry?

23 A. Uh-huh.

24 Q. Can you tell me who those people are?

25 A. Don Hardwick. He's a Beam employee,

1 former Beam employee. Randy Allender. And his
2 friends -- I'm in the Kentucky Bourbon -- the
3 Frankfort Bourbon Society with some drinking
4 friends. When they come down to my bar, I was
5 asking them, as they like to drink Maker's Mark,
6 I said would you associate Bowmaker with Maker's
7 Mark? And most of them are like never heard of
8 it, but no. Would it sound -- why is it --
9 because it has "maker" in it? Is that why
10 you're saying that? I mean, most of them found
11 it very curious that I would even ask them.

12 Q. Were all those people familiar with the
13 Maker's Mark brand?

14 A. Sure. Everybody knows Maker's Mark.

15 Q. The Frankfort Bourbon Society, what's
16 that? It sounds great. I want to join. What's
17 that?

18 A. Well, they would have brands come in
19 and present to them, so like private tastings.
20 I think they limit it to 200 people. So you pay
21 a hundred bucks and then they'll have -- before
22 COVID, they would have like a cocktail hour.
23 And they can have someone like Bryan come in and
24 talk about his brand and give samples and then
25 sell bottles to the Bourbon Society.

1 Q. And do they have a liquor -- do they
2 have a bar, an operating bar?

3 A. They have a store, a store.

4 Q. Do they sell liquor?

5 A. Uh-huh.

6 Q. Do they sell Maker's Mark?

7 A. They do.

8 Q. At one point you made a reference to
9 your bar. Did I hear that right?

10 A. Yes, uh-huh.

11 Q. What is that?

12 A. In my house I have a bar.

13 Q. Oh, in your house?

14 A. Yeah.

15 Q. Gotcha.

16 A. I have Maker's Mark in it.

17 Q. You do, okay?

18 A. Oh, yeah.

19 Q. And this is like in the basement?

20 A. Uh-huh.

21 Q. God, if I only had a basement, I would
22 have a basement bar. But I don't have a
23 basement. Okay. Great.

24 Anyone else in the industry that -- I
25 know you talked about your friends from the

1 Frankfort Bourbon Society and those two other
2 names.

3 A. I mean, guys I play golf with. This
4 has really kind of been -- I've just been kind
5 of besides myself about this association. I
6 mean, I'm just trying to find somebody that
7 would agree that they would think something like
8 Bowmaker's sounds like Maker's Mark. I haven't
9 found a person yet.

10 Q. Okay. Now, you -- you submitted a
11 declaration in this case, correct?

12 A. I did.

13 Q. So we're going to show it to you just
14 to have you identify it. And, Brian, if you
15 could mark that exhibit. And, Mr. Rodgers, you
16 should see it on your screen. I realize you
17 have one right there with you.

18 A. Yeah.

19 Q. So feel free to look at that if it's
20 easier. But we'll just mark it as an exhibit.

21 THE TECHNICIAN: Counsel, is that the one
22 labeled Rodgers Declaration?

23 MR. ASSMUS: Yes.

24 THE TECHNICIAN: Stand by, please.

25

1 (Whereupon, Maker's Mark
2 Deposition Exhibit 18 was
3 marked for identification.)

4 THE TECHNICIAN: Exhibit 18 on screen.

5 BY MR. ASSMUS:

6 Q. Great.

7 So, Mr. Rodgers, you can see it on the
8 screen here, although if it's easier, feel free
9 to look at the one you have on paper.

10 This is your declaration?

11 A. Okay.

12 Q. Is that correct?

13 A. Yes.

14 MR. ASSMUS: Brian, if we can scroll to the
15 last page.

16 BY MR. ASSMUS:

17 Q. I just want to -- if we can make sure
18 that's your signature on the bottom of page 3,
19 Mr. Rodgers.

20 A. That's it, yes.

21 Q. And did you draft this declaration
22 yourself?

23 A. I did not.

24 Q. Who drafted it?

25 A. Ted spoke with me and I provided him

1 the information. He wrote it.

2 Q. Did you edit it at all before you
3 signed it?

4 A. I did.

5 Q. And do you recall what edits you made?

6 A. He spelled my name wrong for one thing.
7 And I think he had some of the dates wrong, so I
8 fixed that. But other than that, I think it was
9 pretty much okay.

10 Q. Do you know if Mr. Parks had any role
11 in drafting this declaration?

12 A. Not to my knowledge.

13 Q. Anything sitting here today that you
14 now believe is untrue or inaccurate in this
15 declaration?

16 A. No.

17 Q. Great. We will get back to that
18 declaration in a second. I wanted to learn just
19 a little bit more about your background.

20 You're a graduate of Kentucky State
21 University, correct?

22 A. Correct.

23 Q. And you have a degree in accounting and
24 finance?

25 A. Correct.

1 Q. Do you have any other educational
2 degrees?

3 A. No.

4 Q. And after you graduated from Kentucky
5 State, you launched a career in corporate
6 accounting. Is that fair to say?

7 A. I guess you could call it that.

8 Q. Well, what would you call it?

9 A. Well, I was in manufacturing. I don't
10 know if you'd -- my first career -- my first job
11 was with a small craft distillery called 21
12 Brands. So I worked there a couple years, and
13 then I went to work for National Distillers as
14 their controller. And then Jim Beam bought
15 National Distillers, so I became an employee of
16 Jim Beam.

17 So I was in manufacturing controlling
18 for 25 years and then I became -- went to the
19 corporate accounting.

20 Q. Gotcha. Okay. That's helpful.

21 So your first job out of college was
22 with a distillery called 21 Brands?

23 A. Yes, sir.

24 Q. Okay. And what did they make?

25 A. Ezra Brooks. Ezra Brooks is their main

1 whiskey.

2 Q. Got it.

3 Is it a bourbon or a whiskey actually?

4 A. It's a bourbon.

5 Q. And what did you do for 21 Brands?

6 A. I was just an accountant, worked for
7 the CFO.

8 Q. You weren't involved in branding there?

9 A. No.

10 Q. What about marketing?

11 A. No. All handled out of New York.

12 Q. And what was your next job after 21
13 Brands?

14 A. I went to National Distillers as head
15 of the accounting department, manufacturing
16 accounting.

17 Q. And why did you leave 21 Brands?

18 A. Bigger company. 21 Brands was real
19 small. They were sold to a company. I was
20 going to have to move to Owensboro. Lot of
21 issues. And National was right in Frankfort
22 where I lived, bigger company.

23 Q. What brands is National Distillers
24 known for, if any?

25 A. Old Grand-Dad.

1 Q. Yeah, we know Old Grand-Dad. We do the
2 trademark for Old Grand-Dad.

3 How long did you work for National
4 Distillers?

5 A. Twelve-and-a-half years, I believe it
6 was. And then Jim Beam bought National, and so
7 all my years carried over to Jim Beam on the
8 Beam pension.

9 Q. And you drew a distinction between sort
10 of manufacturing accounting and corporate
11 accounting. What's that distinction in your
12 mind?

13 A. Well, manufacturing accounting, you're
14 taking care of all the production costs and the
15 inventory of the barrels. So it's a whole
16 different genre.

17 Now, when I became corporate controller
18 and moved to Chicago in 2000 and became the
19 corporate controller, then I entered into all
20 this marketing and sales that you're asking
21 about and became involved in that.

22 Q. And when you say you became involved in
23 that, you mean that as a corporate controller,
24 you were responsible for the accounting of
25 marketing costs and expenses?

1 A. That, and I started placing accountants
2 into the marking department, managing their
3 budget, meeting with them, discussing their
4 budget, trying to understand how they were
5 spending their money and on what.

6 Q. And did you have any responsibility for
7 marketing or branding decisions in that role?

8 A. Only financial. I might tell them they
9 have to cut back and they would decide where.

10 Q. But you wouldn't yourself decide where
11 they had to cut back, just that they had to?

12 A. I might give them some idea what I
13 felt, but they didn't have to follow it.

14 Q. Okay. And we understand you retired
15 from Beam in 2008?

16 A. Yes.

17 Q. And did you actually retire or did you
18 take a new job?

19 A. I didn't take a new job. I actually
20 officially in their terms retired.

21 Q. And -- but you continued to work, so to
22 speak.

23 And what was your next job after Beam?

24 A. I became a consultant. So I think
25 the -- I worked for a school, one of those

1 after-school programs. I helped a guy with
2 that. And then I went to ISA, the scrap
3 company, and worked there. And then -- I was
4 there a couple years, and I worked a couple
5 years at Roll Forming, a metal company. And I
6 also started my consulting on the whisky
7 business and teaching a class on finance. And
8 as that grew, I quit these other outside
9 consulting jobs.

10 Q. And what did Industrial Services of
11 America do?

12 A. Scrap. They bought and sold scrap.
13 Metal, aluminum, stainless steel.

14 Q. Yep.

15 And did you mention Rabbit Hole
16 Distilleries? Is that was one of your clients?

17 A. Yes.

18 Q. But you weren't an employee of Rabbit
19 Hole?

20 A. No.

21 Q. Were you an employee of Roll Forming
22 Corporation you mentioned?

23 A. No. I've not been an employee of
24 anybody since Beam. All consulting.

25 Q. Has any of your consulting been

1 branding consulting?

2 A. No.

3 MR. ASSMUS: Could we mark your -- Brian, if
4 we can mark Mr. Rodgers's LinkedIn profile.

5 THE TECHNICIAN: Stand by, please.

6 BY MR. ASSMUS:

7 Q. And while you're doing that,
8 Mr. Rodgers, you keep a profile on LinkedIn?

9 A. Yes.

10 THE TECHNICIAN: Exhibit 19 on screen.

11 (Whereupon, Maker's Mark
12 Deposition Exhibit 19 was
13 marked for identification.)

14 BY MR. ASSMUS:

15 Q. Mr. Rodgers, let us know if you can't
16 read that very well.

17 A. Okay.

18 Q. Great. And this -- this is a print --
19 do you recognize this as a printout of your
20 LinkedIn profile?

21 A. Yes.

22 Q. And do you personally maintain the
23 information on this LinkedIn profile?

24 A. It's been a while, but I did.

25 Q. It hasn't been updated in some time?

1 A. No.

2 Q. Could we go to the second page. You
3 list yourself as a distillation consultant for
4 Rodgers Consulting LLC.

5 Rodgers Consulting LLC is the LLC you
6 formed to carry out this consulting business?

7 A. Yes.

8 Q. Is the description you gave for your
9 work there accurate?

10 A. I believe so.

11 Q. And then the next entry down, Roll
12 Forming Corporation, that's the -- one of the
13 metal businesses you said you worked for?

14 A. Yes.

15 Q. And Rabbit Hole Distillery you acted as
16 their CFO but in a consultant role; is that
17 right?

18 A. Correct.

19 Q. What did Rabbit Hole Distillery make?

20 A. They made bourbon and rye.

21 Q. And then underneath that, you acted as
22 the chief administrative officer for Industrial
23 Services of America?

24 A. Yes.

25 Q. And then if we could go to the next

1 page, you list your 34 years at Beam.

2 To your knowledge, is your description
3 of the work you did at Beam accurate?

4 A. Yes.

5 Q. Did you have a -- you had various
6 titles at Beam, correct?

7 A. Correct.

8 Q. And if we wanted to -- if you wanted to
9 figure out your exact title and the dates of
10 having those titles at Beam, where would you get
11 that information?

12 A. For -- you mean -- give me an example
13 of what you're asking here.

14 Q. Well, like, for example, if we wanted
15 to know what your exact title was in, you know,
16 February 1978, where would we get that
17 information?

18 A. Probably out of my HR file.

19 Q. At Beam?

20 A. At Beam.

21 Q. Yeah. Okay.

22 And you started -- you started Rodgers
23 Consulting soon after you left Beam?

24 A. Yes.

25 Q. Do you recall when you formed that LLC?

1 A. It was either '08 or '09.

2 Q. And is that consulting business your
3 primary source of business since you retired
4 from Beam?

5 A. Yes. I mean, I have a pension.

6 Q. Sure.

7 Primary source of earned income, let's
8 call it.

9 A. Yes.

10 Q. I understand from your consulting
11 website, you're the sole employee of Rodgers
12 Consulting?

13 A. I have added two of my sons since it's
14 gotten bigger, they're helping.

15 Q. Anyone else?

16 A. No.

17 Q. Since 2008, are your two sons your only
18 two employees?

19 A. Just this last year they became
20 employed.

21 Q. Just this last year.

22 And what are their roles at Rodgers
23 Consulting?

24 A. One of them provides financial
25 reporting and one of them provides backup to the

1 general ledger and then counting barrels,
2 counting inventory.

3 Q. Great.

4 Have either of your two sons done any
5 work for Bowmaker's Whiskey?

6 A. No.

7 Q. Okay. And are you the sole owner of
8 Rodgers Consulting?

9 A. Yes.

10 Q. Do you have any financial stake in
11 Bowmaker's Whiskey Company?

12 A. No.

13 Q. Rodgers Consulting maintains a website,
14 correct?

15 A. Pardon?

16 Q. Your business Rodgers Consulting, it
17 maintains a website, correct?

18 A. Yes.

19 Q. Great.

20 MR. ASSMUS: If we can mark, Brian, the
21 website printout.

22 THE TECHNICIAN: Distilling Accounting
23 website?

24 MR. ASSMUS: Yes. Thank you.

25 THE TECHNICIAN: Stand by.

1 (Whereupon, Maker's Mark
2 Deposition Exhibit 20 was
3 marked for identification.)

4 THE TECHNICIAN: Exhibit 20 on screen.

5 MR. ASSMUS: Great.

6 BY MR. ASSMUS:

7 Q. So, Mr. Rodgers, sometimes it's a
8 little hard to print a website, but we did the
9 best we could.

10 Does this appear to be a printout of
11 the website that you maintain?

12 A. Yes.

13 Q. And did you -- did you create this
14 website yourself?

15 A. No.

16 Q. Who created it for you?

17 A. GoDaddy.

18 Q. Got it.

19 And what's the purpose of the website?

20 A. To attract craft distillers.

21 Q. For your consulting services?

22 A. For my consulting services, yeah.

23 Q. And is it an accurate depiction -- does
24 the website accurately depict the services you
25 offer to prospective customers?

1 A. Yes.

2 MR. ASSMUS: Okay. We can take that down.

3 BY MR. ASSMUS:

4 Q. In your work with Mr. Parks, did you
5 ever correspond with him via email?

6 A. Yes.

7 Q. And have you kept copies of those
8 emails?

9 A. Yes.

10 Q. Did you have any other written
11 correspondence with Mr. Parks other than emails
12 and the two contracts you sent him?

13 A. No.

14 Q. Have you helped Mr. Parks at all find a
15 distributor?

16 A. No.

17 Q. If I understood your prior testimony
18 correctly, the sum total of the fees Mr. Parks
19 and Bowmaker's have paid for your services is
20 \$3,000?

21 A. Yes.

22 Q. And did you invoice Bowmaker's for that
23 amount?

24 A. I don't recall. Probably. I mean, but
25 he sent me \$3,000.

1 Q. Got it.

2 And you haven't sent him any other
3 invoices for additional services?

4 A. No.

5 Q. When did you first learn that Maker's
6 Mark had opposed the Bowmaker's application for
7 its brand?

8 A. I don't recall the dates. I believe it
9 was as soon as it happened Bryan called me and
10 asked me what I thought.

11 Q. And what did you --

12 A. What did I think?

13 Q. Yeah.

14 A. I told them I thought it was
15 ridiculous. I mean, a little small guy. I
16 mean, I think he had 25 barrels wanting to blend
17 whiskey in his barn would get Maker's Mark's
18 attention.

19 Q. Have you ever heard of something called
20 Moonshine University?

21 A. Yes, I teach there.

22 Q. Were you aware that Mr. Parks had
23 attended Moonshine University?

24 A. That might be where he met me. I'm not
25 sure. There's a lot of people that come through

1 there.

2 Q. But you weren't aware he'd attended it?

3 A. No, not to my knowledge.

4 Q. Have you ever visited Bowmaker's
5 Whiskey's website?

6 A. No.

7 Q. Were you aware that the first iteration
8 of that website copied certain language from the
9 Maker's Mark website?

10 MR. BREINER: Objection, lack of foundation.

11 BY MR. ASSMUS:

12 Q. You can answer.

13 A. No. I've never been to the website.

14 Q. And you weren't aware that copying?

15 A. No.

16 MR. BREINER: Same objection.

17 BY MR. ASSMUS:

18 Q. Do you recall what Mr. Parks told you
19 about the opposition that Maker's Mark filed at
20 the time that you discussed it with him?

21 A. That Bowmaker's had the word "makers"
22 in it. I told him to change his name to
23 homemakers and see if they wanted to fight the
24 homemakers of the world.

25 I think it's ridiculous. I mean, as

1 being there as a corporate controller, if the
2 legal team brought that into the executive
3 council saying they were going to fight some guy
4 in Michigan over the Bowmaker's name, I would
5 say we've got better things to do than that.

6 Q. While you were at Beam, did you have
7 any responsibility for trademark enforcement?

8 A. No.

9 Q. Do you recall ballpark how many
10 conversations you've with Mr. Parks regarding
11 the -- this opposition?

12 A. Maybe four, five.

13 Q. And do you -- when was the last one?

14 A. When he asked me if I would testify.
15 And then I called him yesterday or whatever and
16 said, "Send me your label. I'd like to see the
17 label that you're using to see if I can
18 understand what this is all about."

19 Q. And did he send you the label?

20 A. He did.

21 Q. Was that the first time you had seen
22 the label?

23 A. That was the first time.

24 Q. Do you understand whether Mr. Parks's
25 trademark application includes the design that

1 you see on the label?

2 A. No. I don't know what his trademark
3 application had.

4 Q. Okay. Do you know what goods he
5 applied for in connection with his trademark
6 application?

7 A. No, I don't know anything about his
8 trademark application. Didn't help him.

9 Q. Okay. I'm going to turn back to your
10 declaration.

11 MR. ASSMUS: Brian, we don't need to put it
12 up unless, Ted, you want it. But I've got my
13 copy here.

14 BY MR. ASSMUS:

15 Q. And, Mr. Rodgers, I think you have a
16 copy of your declaration, correct?

17 A. Yes.

18 Q. Okay. By the way, we see on your Zoom
19 screen here that your user name is BeamDaddy.
20 And I believe your email address is BeamDaddy;
21 is that correct?

22 A. That's correct.

23 Q. BeamDaddy@AOL.com?

24 A. Yes.

25 Q. How long have you had that email

1 address?

2 A. When email started.

3 Q. Yeah, if it's an AOL, right?

4 A. Yes.

5 Q. You were an early adopter?

6 A. I get a lot of abuse about that.

7 Q. Don't listen to them. You know, it's
8 at the point now where it's hip, I think.

9 And I take the Beam in that is a
10 reference to your former employer, Beam Suntory,
11 right?

12 A. Yes, I was employed there when I got
13 it.

14 Q. Got it.

15 Okay. So to your declaration, I had a
16 couple questions about your declaration.

17 A. Okay.

18 Q. You say in paragraph two that Rodgers
19 Consulting consults with respect to the
20 distilled spirits industry, including providing
21 accounting and marketing needs for new and
22 established business.

23 What are the marketing services that
24 you provide?

25 A. Well, in that interview process when I

1 come up with what product you're going to have,
2 how much you're going to sell it, I would tell
3 you what kind of marketing budget you would
4 have. And then there are consultants in the
5 industry that do just marketing. If they're big
6 enough, I would point them in that direction.
7 Bryan is not big enough to hire a marketing
8 company, so never got there with him.

9 Q. Okay. But you wouldn't give them
10 substantive marketing advice, more advice about
11 costs to expect with respect to marketing; is
12 that fair?

13 A. Correct.

14 Now, I have sat in marketing meetings
15 with clients where marketing people have made
16 their pitch and I've been asked my opinion about
17 the whole pitch and what it costs. Most people
18 are all concerned about the cost.

19 Q. Right.

20 A. Pitch is also important.

21 Q. Got it.

22 And you worked for Beam and its
23 predecessors for 34 years, correct? That's what
24 your declaration says?

25 A. Correct.

1 Q. Where would you rank Maker's Mark in
2 terms of the brands that are in the Beam Suntory
3 empire?

4 A. Second.

5 Q. Second to Jim Beam?

6 A. Uh-huh.

7 Q. And you've actually been in the
8 distilling spirits industry for even longer than
9 34 years, correct?

10 A. Correct.

11 Q. What do you think are the leading
12 bourbon brands in the United States?

13 A. What do I think the leading?

14 Q. Yeah. Yeah.

15 A. Of course, Beam, Knobb Creek, Jack
16 Daniels, Maker's. Those are the biggies.

17 Q. Got it.

18 And when you say Maker's, you mean
19 Maker's Mark?

20 A. Yes, Maker's Mark.

21 Q. Maker's is a nickname for Maker's Mark?

22 A. Like Jim is a nickname for Jim Beam.
23 Yeah.

24 Q. If I showed up at a bar in Frankfort,
25 Kentucky, and asked for a Maker's, what would

1 they give me?

2 A. Maker's Mark.

3 Q. So you were actually at Beam when they
4 acquired Maker's Mark?

5 A. I was.

6 Q. Did you work on the valuation or the
7 accounting for that acquisition?

8 A. I did. I was the head of the
9 integration of the whole purchase of Allied
10 Domecq, the financial.

11 Q. And what was involved in being the head
12 of that integration?

13 A. Well, there was brands in Spain and
14 France and Mexico, all these different countries
15 and they all had different accounting systems,
16 and -- including Maker's Mark, it had its own
17 accounting system. So I had to integrate them
18 into the Beam system.

19 Q. Do you recall the purchase price for
20 that business?

21 A. It was like eight or nine billion,
22 something like that.

23 Q. Did the Maker's Mark brand account for
24 a big portion of that value?

25 A. No. There was a lot of brands, maybe

1 15 percent.

2 Q. 15 percent?

3 A. Maybe.

4 Q. Was Maker's Mark one of the best-known
5 brands in the United States that were part of
6 the Allied Domecq acquisition?

7 A. Best-known bourbon.

8 Q. What were some of the other brands in
9 that acquisition?

10 A. Gosh. A long time ago. Let's see.
11 They had Sazerac Tequila, I think. They had a
12 tequila.

13 Brand -- Beam was really trying to
14 expand their portfolio when they bought Allied
15 Domecq and get more international presence, and
16 so they had a bunch of brands over in Spain and
17 France, cognac and such. And they didn't want
18 Pernod Ricard to get Maker's Mark either. They
19 went together with Pernod Ricard to buy the
20 come, Allied Domecq, and then they got to choose
21 brands, like picking up a ball team.

22 And so then you -- it was like a draft
23 day thing. We were sitting there on the boards
24 and we'd tried to figure out what -- what Pernod
25 Ricard could draft, what the trade commission

1 would let them draft and what they wouldn't. So
2 if they weren't going to let them draft it, they
3 went on the bottom of our draft list.

4 So I don't know the order where Maker's
5 came, but it was -- Maker's Mark was probably up
6 there pretty high up in our draft because we
7 didn't want them to get them.

8 Q. Why didn't -- why didn't Beam want
9 Pernod Ricard to obtain the Maker's Mark brand?

10 A. Not obtain it, you mean?

11 Q. Yes.

12 A. They didn't want them to have a bourbon
13 presence in the U.S.

14 Q. And would you call Beam's acquisition
15 of the Maker's Mark brand a successful
16 acquisition?

17 A. Yes.

18 Q. And why is that?

19 A. It's a well-known brand.

20 Q. I mean, would you call it a famous
21 brand?

22 A. Yes.

23 Q. Back to your declaration, you said you
24 interviewed Mitch Wagner?

25 A. Yes.

1 Q. Do you recall what role Mr. Wagner was
2 interviewing for at that time?

3 A. It was for an accountant.

4 Q. Oh, for accounting, okay. No kidding.
5 And do you recall supporting his being
6 hired?

7 A. No.

8 Q. You don't recall?

9 A. I recall not supporting his being
10 hired. I was the one that made the choice; I
11 didn't hire him. It wasn't anything to do with
12 his qualifications or anything. He lived in
13 Louisville and, I mean, he told me a whole lot
14 about his life. His wife was a -- on the news
15 or weather on a channel in Louisville.

16 So I wanted a long-term employee, and I
17 saw this as just he needed a job. And I might
18 get him for six months or a year until he found
19 something else. And I believe I told him that,
20 that, hey, he was very qualified, but I think
21 you can probably do better somewhere else. So I
22 hired somebody else.

23 Q. Okay. Got it. So I had not understood
24 that from your declaration.

25 So Mr. Wagner came to work for Beam

1 late -- later?

2 A. By way of the acquisition.

3 Q. By way of the acquisition.

4 A. He was the CFO for Maker's Mark.

5 Q. Uh-huh.

6 A. I believe that's the title he had.

7 Q. Yeah. Do you recall when you
8 interviewed Mr. Wagner?

9 A. No.

10 Q. But it would have been before the
11 Maker's Mark acquisition; is that right?

12 A. Yeah, years before.

13 Q. Years before?

14 A. Like ten years.

15 Q. Okay. And in your declaration you said
16 -- strike that.

17 But ultimately you and Mr. Wagner came
18 to work for Beam at the same time, correct?

19 A. Correct.

20 Q. Yeah. And in your declaration in
21 paragraph seven, you said, "While I was at Beam,
22 I was in a senior position to Mr. Wagner."

23 Mr. Wagner didn't report to you, did
24 he?

25 A. Okay. So Maker's Mark had a very

1 unusual situation when we bought them. And so
2 Bill Samuels, who was the founder of Maker's
3 Mark, he wanted that to be treated like a
4 separate company. And so Mitch Wagner reported
5 to Bill Samuels, I believe. He had a dotted
6 line to this -- to the CFO with Beam.

7 Q. And the CF -- did you report to the CFO
8 at Beam?

9 A. I did.

10 Q. Yeah.

11 So you and Mr. Wagner both reported to
12 the CFO of Beam, although it sounds like
13 Mr. Wagner's was a dotted line, so to speak?

14 A. Yes.

15 Q. So what did you mean, "While I was at
16 Beam, I was in a senior position to Mr. Wagner"?

17 A. Well, as a corporate controller, I was
18 on the admin council which would review legal
19 spending and admin and HR rules and all kind --
20 you know, we would decide how the company --
21 recommendations for the board of directors, you
22 know, on how things ran. Mitch Wagner wasn't
23 involved in all that.

24 In our world, we just looked at
25 Mitch Wagner, not that he was a plant

1 controller. But Maker's Mark called him a CFO
2 and Bill Samuels wanted things to be separate.
3 I mean, Bill Samuels insisted that all the
4 invoices go out with Maker's Mark on it; so as
5 part of that integration team, I had to go back
6 to our IT people and say, all right, when we
7 print invoices and bills of lading down in
8 Loretta, it has to say Maker's Mark on it. But
9 when we send an invoice to the customers, it's
10 to say Jim Beam on it. So we basically just
11 worked around -- it was a workaround to make
12 them happy.

13 Q. Got it. And you understand that
14 Mr. Wagner has now taken on some new roles at
15 Beam, correct?

16 A. No, not really aware of what he's
17 doing. I know he's still with the company.

18 I believe that he later reported to the
19 guy that took my place, but I don't know that
20 for a fact.

21 Q. Okay. Great.

22 MR. ASSMUS: So maybe we can take a quick
23 break and we'll convene on my law firm's side to
24 see what other questions we have for you. So
25 feel free to use this as a chance to take a

1 quick break, and we'll be back to you in maybe
2 under ten minutes and see if we can wrap up.

3 A. Okay, sounds fine.

4 MR. BREINER: Do you want us to come back in
5 ten minutes? It's about two minutes to 11:00.
6 Should we come back at 11:08?

7 MR. ASSMUS: Perfect.

8 (Whereupon, a recess was had at
9 9:58 a.m., after which the
10 deposition was resumed at
11 10:10 a.m. as follows:)

12 MR. ASSMUS: I don't have a lot.

13 BY MR. ASSMUS:

14 Q. Do you understand that Mr. Parks
15 launched his business to make money or just as a
16 hobby?

17 A. Well, I hope he wants to make money.

18 Q. You mentioned he was starting small.
19 Do you know whether Mr. Parks has plans to grow
20 the Bowmaker's Whiskey business?

21 A. We haven't got that far.

22 Q. Do you know what -- what channels of
23 trade he intends to sell his spirits in?

24 A. Other than sell them out of his barn, I
25 don't -- I don't know. I mean, he'd have to go

1 to a distributor if he was going to sell it
2 outside.

3 Q. But you don't know -- you don't know
4 the current status of any distribution
5 arrangements?

6 A. No, because he doesn't have all of his
7 documents. You know, he hasn't been approved.

8 Q. And you're not aware what liquor stores
9 he might want to sell in?

10 A. No.

11 Q. Do you know whether or not he plans to
12 have a tasting room?

13 A. Let me see if I have anything about
14 that. No, I don't -- I think he plans to. I do
15 believe he plans to have a tasting room in his
16 barn there and sell out of it.

17 Q. Do you know whether he plans to have
18 his spirits available in bars and restaurants?

19 A. Well, it would be hard to with no more
20 barrels than he has. When I last talked to him,
21 he only had 25 barrels, when I talked to him.
22 So that's like, you know, 2500 bottles.

23 Q. If Mr. Parks grew the business, do you
24 have any idea whether he plans to be in bars and
25 restaurants?

1 A. No, we didn't discuss that.

2 MR. ASSMUS: Okay. Mr. Breiner may have
3 additional questions for you, but I don't at
4 this point. So we'll thank you for your time so
5 far.

6 THE WITNESS: Sure.

7 MR. BREINER: I just have a very few
8 questions.

9 EXAMINATION

10 BY MR. BREINER:

11 Q. During your testimony, Mr. Rodgers, you
12 referred to a Don Harwig at Beam?

13 A. Hardwick.

14 Q. How do you spell that?

15 A. H-a-r-d-w-i-c-k.

16 Q. And who is he? Who is Mr. Hardwick?

17 A. He was vice president of purchasing for
18 Jim Beam. And now that he has retired, he
19 consults craft distillers on bottles, labels,
20 caps, contract bottling, operations-type stuff.
21 He and I work a lot together.

22 Q. And what was your discussion with him
23 that you referred to?

24 A. I -- I told him I was going to have
25 to -- I was being deposed by Jim Beam. And he

1 said, Really? What for? What did you do? I
2 said they're in a conflict with one of my
3 clients. And he said which one? And I said
4 Bowmaker's. And he said what's their problem
5 with Bowmaker's? And I said it sounds too much
6 like Maker's Mark to them. And he laughed. He
7 said, "You got to be kidding me."

8 So, like I say, everyone that I have
9 talked to cannot believe it.

10 Q. Well, Mr. Wagner states in his
11 declaration that he's vice president of finance
12 for Maker's Mark Distillery, Inc.

13 How do the job functions of vice
14 president of finance relate? Are they similar
15 to what you did at Beam, if you know?

16 A. Smaller scale, just for a brand,
17 Maker's Mark.

18 Q. So what you were doing at Jim Beam
19 would have been similar to what he is doing for
20 Maker's Mark?

21 A. Yes, except I would have sat over
22 Maker's Mark to monitor what Maker's Mark was
23 doing. I mean, they -- they did report to Jim
24 Beam because it was just a lot of crooked dotted
25 lines about who reported to who. We basically

1 knew that from long ago. They made a lot of
2 money.

3 Q. There was a question to you with
4 respect to trademark enforcement at Beam. Would
5 you have been aware of trademark enforcement at
6 Beam when you were there?

7 A. Yes. Now, our executive council had
8 the legal team, and so everyone would bring
9 whatever they were working on, issues and such.
10 And so we would talk about what -- what HR, you
11 know, affirmative action plans, and anything
12 that was going to involve the company would be
13 discussed in that executive council.

14 Q. Okay. And what is an executive
15 council?

16 A. It was all the people that reported to
17 the board members. So like the CFO was on the
18 board, and so I reported to him. So we were
19 almost like legislative aids, you know, for
20 signatures. They didn't want to read all the
21 stuff or hear all the stuff, so we'd go sort it
22 out, work out all the details, and then they
23 would approve it.

24 Q. And in your position in finance at Beam
25 at that time, if during an executive council

1 meeting you'd be talking about trademark
2 enforcement, would you have the right to express
3 an opinion as to what should or should not be
4 done?

5 A. If they were going to hire outside
6 counsel, yes, they'd bring it to that group and
7 we would discuss it.

8 Q. And there were questions to you about
9 marketing and branding. What brands have you
10 had in your career with respect to the marketing
11 and branding in the distilled spirits industry?

12 A. Well, some of my larger clients like
13 Rabbit Hole and Belfour Spirits, as part of my
14 CFO role, they would interview marketing
15 companies about who was going to handle their
16 brand. And so they would have me in there to
17 question them about how the plan was going to
18 work and such.

19 And so I would -- I would have an
20 influence on who they would hire. Of course,
21 they had the final call, but, you know, I would
22 say why don't we go with this marketing company.

23 Q. And in your declaration at paragraph
24 ten, you state, "There is no like" -- or you
25 disagree with Mr. Wagner and you state that

1 "There is no likelihood of confusion between the
2 Bowmaker's Whiskey trademark for distilled
3 spirits, whiskey and bourbon, and the trademarks
4 Maker's Mark, Maker's 46, or Maker's Private
5 Select for bourbon and whiskey."

6 Based on your experience in the spirits
7 industry, do you believe that you can make that
8 determination?

9 A. Sure. Maker's Mark is very unique in
10 the red wax. Everyone knows that. I mean, it's
11 a well-known brand, there's no doubting it. If
12 not, it's right there with Jim Beam and Jack
13 Daniels.

14 And Bowmaker's, that's why I wanted to
15 see the label. I mean, there's no red wax --
16 there's no wax on this -- I don't even think he
17 has a bottle yet. He just has a label, and it
18 looks nothing like a Maker's Mark label.

19 And the way he's got "Maker's" spelled
20 in it with a bow for the A, it's not really
21 clear that the name of it is Bowmaker's to tell
22 you the truth.

23 MR. BREINER: Mr. Rodgers, thank you for your
24 time. I have no further questions and I
25 appreciate you being here today.

1 MR. ASSMUS: Great. I have one further
2 question.

3 EXAMINATION (FURTHER)

4 BY MR. ASSMUS:

5 Q. Mr. Breiner asked you about your
6 knowledge of Beam's enforcement efforts.

7 Do you recall any enforcement efforts
8 that you became aware of at Beam related to the
9 Maker's Mark brand?

10 A. Well, to keep them autonomous.

11 You know, Bill Samuels says it says
12 Maker's on the trucks and it says Maker's on the
13 invoices, you got to make it happen.

14 Q. Sure --

15 A. So I went to the executive council and
16 I said we got to make this happen.

17 Q. I don't think my question was clear.

18 Do you recall becoming aware of any
19 trademark infringement matters that Maker's Mark
20 brought to this executive council?

21 A. Not during my time.

22 MR. ASSMUS: I have nothing further.

23 MR. BREINER: Either do I. Thank you again,
24 Mr. Rodgers.

25 MR. ASSMUS: Thank you very much. It was a

1 pleasure.

2 THE WITNESS: Thank you all.

3 (Whereupon, the witness was
4 excused.)

5 (The proceedings concluded at
6 10:20 a.m.)

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1 STATE OF ILLINOIS

2 COUNTY OF COOK

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4 I, CHERYL L. SANDECKI, a Certified
5 Shorthand Reporter within and for the State of
6 Illinois, do hereby certify that heretofore,
7 to-wit, on January 26, 2021, personally appeared
8 before me virtually, DON L. ROGERS, in a cause
9 now pending and undetermined In the United
10 States Patent and Trademark Office Before the
11 Trademark Trial and Appeal Board, wherein
12 MAKER'S MARK DISTILLERY, INC., is the Opposer,
13 and BOWMAKER'S WHISKEY COMPANY is the Applicant.

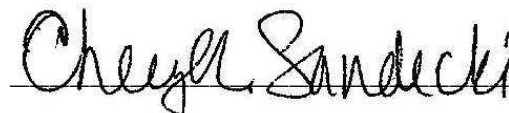
14 I further certify that the said
15 DON L. ROGERS was first administered an oath to
16 testify the truth, the whole truth and nothing
17 but the truth in the cause aforesaid; that the
18 testimony then given by said witness was
19 reported stenographically by me in the presence
20 of the said witness, and afterwards reduced to
21 typewriting by Computer-Aided Transcription, and
22 the foregoing is a true and correct transcript
23 of the testimony so given by said witness as
24 aforesaid.

25

1 I further certify that the signature to
2 the foregoing deposition was waived by counsel
3 for the respective parties and that there were
4 present at the deposition the attorneys
5 hereinbefore mentioned.

6 I further certify that I am not counsel
7 for nor in any way related to the parties to
8 this suit, nor am I in any way interested in the
9 outcome thereof.

10 IN TESTIMONY WHEREOF: I certify to the
11 above facts this 28th day of January, 2021.

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18 CHERYL L. SANDECKI, CSR, RPR

19 LICENSE NO.: 084-03710
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Transcript of Don L. Rodgers
Conducted on January 26, 2021

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

MAKER'S MARK DISTILLERY, INC.,)	
)	
Opposer,)	
)	Opposition No. 91239589
v.)	
)	
)	USSN 87/383,989
)	Mark: BOWMAKER'S WHISKEY
BOWMAKER'S WHISKEY COMPANY,)	
)	
Applicant.)	

DECLARATION OF DON RODGERS

Don Rodgers declares that:

1. I am a consultant at Rodgers Consulting, LLC located in Frankfort, Kentucky. I make this declaration based on personal knowledge unless otherwise stated.
2. I have been a consultant for Rodgers Consulting, LLC since about 2008. Rodgers Consulting, LLC consults with respect to the distilled spirits industry, including providing accounting and marketing needs for new and established businesses.
3. I worked at Beam Global Spirits and Wine ("Beam") for 34 years, including as Vice President of Integration, Vice President Corporate Controller, Vice President Controller, Corporate Controller and Manufacturing Controller. During this time, I gained substantial experience in the distilled spirits industry, including with respect to JIM BEAM bourbon and MAKER'S MARK bourbon, both products of Beam.
4. I received a bachelor's degree in finance from the Kentucky State University.



5. Bowmaker's Whiskey Company ("BWC") is a client of Rodgers Consulting and I have provided consulting services to BWC.

6. I understand that Maker's Mark Distillery, Inc. ("Maker's Mark") has opposed registration of BWC's trademark application for the trademark BOWMAKER'S WHISKEY on the grounds that the trademark BOWMAKER'S WHISKEY is confusingly similar to the Maker's Mark trademarks for MAKER'S MARK, MAKER'S MARK PRIVATE SELECT, MAKER'S 46 and MAKER'S (collectively "the Maker's Mark Trademarks"). I provide this declaration in response to the Maker's Mark opposition.

7. While I was at Beam, Beam acquired Maker's Mark in about 2006. As part of my responsibilities, I oversaw the Maker's Mark accounting and finance. For example, I initially interviewed Mr. Mitch Wagner (who has provided a declaration in this case) for a position at Beam and who was subsequently hired by Maker's Mark. While I was at Beam, I was in a senior position to Mr. Wagner.

8. Mr. Bryan Parks of BWC contacted me in about late 2016 for consulting services. At that time, he advised that the brand for his products would be BOWMAKER'S WHISKEY. During our discussions, I was fully familiar with the Maker's Mark products and the Maker's Mark Trademarks. If I thought that there would be any likelihood of confusion between the name BOWMAKER'S WHISKEY and the Maker's Mark Trademarks, I would have so advised Mr. Parks, and I would have advised him to select another name. Such advice is part of our consulting services.

9. I have reviewed the Declaration of Mr. Mitch Wagner. Mr. Wagner states at paragraph 27 that:

If Applicant is allowed to use and register the trademark BOWMAKER'S


WHISKEY for bourbon and distilled spirits, U.S. bourbon consumers will be confused about that product's affiliation with MAKER'S MARK; MAKER'S 46; MAKER'S; and MAKER'S MARK PRIVATE SELECT.

I have been asked by counsel for BWC to respond to this statement.

10. I disagree with Mr. Wagner that there is any likelihood of confusion between the trademarks BOWMAKER'S WHISKEY for distilled spirits, whiskey and bourbon and the trademarks MAKER'S MARK; MAKER'S 46; MAKER'S; or MAKER'S MARK PRIVATE SELECT for bourbon and whiskey. The BOWMAKER'S WHISKEY trademark and the Maker's Mark Trademarks are different in appearance and pronunciation. They create different commercial impressions. For example, the BOWMAKER'S WHISKEY name provides the distinct impression of a person who makes bows. On the other hand, the MAKER'S MARK trademark indicates the mark or branding of a craftsman. Additionally, purchasers of the Maker's Mark product are sophisticated in knowing the brand of bourbon that they are buying due to the nature of bourbon and the expense of the bourbon which may be in the range of \$25 to \$80. Accordingly, I do not believe that there will be any likelihood of confusion in the market between the BOWMAKER'S WHISKEY products and the Maker's Mark products, and clearly not among an appreciable number of ordinarily prudent purchasers of bourbon. Purchasers of bourbon would not make a mistake in thinking that the BOWMAKER'S WHISKEY bourbon is affiliated with the completely different names used by Maker's Mark.

I declare under penalty of perjury that the foregoing is true and correct.

December 28, 2020


Don Rodgers

Don Rodgers | LinkedIn

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Message

Don Rodgers · 3rd

Distillation Consultant <http://www.distillingaccounting.com>

Lexington, Kentucky, United States · 500+ connections ·

Contact info

Rodgers Consulting, LLC

Kentucky State University

About

Financial executive with broad experience in all aspects of accounting, auditing and financial management. Direct experience with Corporate Accounting, Manufacturing accounting and Integration of new acquisitions into existing business model. Expertise in budget and forecasting tool with software company. Negotiated numerous cor... see more

Activity

8,390 followers

Posts Don created, shared, or commented on in the last 90 days are displayed here.

See all activity

Experience



Distillation Consultant

Rodgers Consulting, LLC

Jan 2014 – Present · 7 yrs 1 mo

Louisville, Kentucky Area

Consulting on Distillation accounting process for new and potential investors. Provide Business Plan and financials for Distillation process. Model includes Forecasting and Budgeting Model, Balance Sheets, Profit and Loss Statements and Cash Flow Model. Financials include new distillation estimating sheets, barrel entry cost, property tax estimating and evaporation during aging process. Model covers 10 year period of distillation.

Bottling estimating model for cost of goods and pricing model. Cost of goods including ingredient cost, bottle, label and caps. Calculates Federal Excise tax and gross profit.

Provides for estimating Sales, Marketing and G&A expenses to calculate net profit before Income taxes.

[see less](#)



Consultant

voestalpine Roll Forming Corporation

Feb 2013 – May 2016 · 3 yrs 4 mos

Shelbyville, KY

Assist in Financial analyst and process improvements.



CFO

Rabbit Hole Distillery

2015 – 2016 · 1 yr



Chief Administrative Officer

Industrial Services of America

Oct 2009 – Nov 2010 · 1 yr 2 mos

Developed Business Plan which includes 3 Year Strategic Plan, Budget Process and Forecasting methodology. ISA has increased its business with the purchase of an Alloy Division and the in house expansion which includes a \$10 million dollar Shredder.

My responsibilities include Finance, IT, Purchasing and HR reporting directly to the President.

[see less](#)



Beam Global Spirits

34 yrs 1 mo

VP Corporate Controller

Jan 2000 – Jan 2008 - 8 yrs 1 mo

Directed financial management functions including development of monthly/quarterly financial statements, financial forecasts, and budgets. Over saw general accounting functions, including AR/AP, account reconciliation, and cash management. Administered all financial management systems, evaluating and integrating new applications. Develop highly skilled accounting and financial management team to achieve established objectives. Interacted with the CEO and Executive committee concerning financial forecasts and reports.

Responsible for +\$2 billion dollar budget. Monthly forecasts delivered with 98.5% accuracy.

Managed five direct reports with a total staff of 45 professional accountants.

Developed three year Strategic Plan working with Sales, Marketing, Operations, Finance and Executive committee.

Spearheaded implementation of technology that improved customer service efficiency by 20%. This was a \$25 million Global SAP implementation that was completed on time and on budget. There were numerous other improvements associated with the project.

Strategically restructured financial reporting processes in accordance with organizational changes.

Reduced monthly close by three days.

Recognized in CFO magazine for budget & forecasting system developed

Process improvements projects:

Established SLA's for the Order-to-Cash group which improved efficiency 20%

Established KPI's for finance department, resulting in reducing monthly close process.

Consolidated Canadian accounting operation with Corporate Office

Responsible for coordinating external, internal audits and SOX compliant.

[see less](#)

VP Manufacturing Controller

Jan 1974 – Jan 2000 · 26 yrs 1 mo

Prepared financial reports, developed budgets, and performed variance analysis in accordance with business plan. Compiled periodic financial reporting packages for senior management. Carried out internal audits to ensure regulatory compliance and operational efficiency/accuracy. Built and led teams in carrying out special projects.

Consolidated Plant accounting into a Shared Service Center for five manufacturing plants. Reducing costs \$1.5 million annually.

Developed Cost of Goods manufacturing system used today.

Responsible +\$500 million dollar budget and variance analysis. Budget was consistently with 99.5% of actual spending.

Developed KPI's for Operations increasing efficiency and reducing costs +\$1 million annually.

Cost reduction projects included reducing property taxes, ad valorem taxes and qualifying for energy tax credits with total savings annually \$4 million annually which are still generating savings today.

Responsible for filing Property Tax returns, Ad Valorem Tax returns, Energy Tax returns, State Tax returns and Federal Excise tax returns.

[see less](#)



VP Controller

GLOBAL SPIRITS

Jan 1974 – Jan 2008 · 34 yrs 1 mo



Corporate Controller

Jim Beam Brands

2000 – 2006 · 6 yrs



Manufacturing Controller

Beam Global Spirits & Wine

Oct 1974 – Jan 2000 · 25 yrs 4 mos

Responsible for Corporate Accounting for a \$2 billion dollar company.

[Show fewer experiences](#) ^

Show fewer experiences ^

Education



Kentucky State University

Bachelor, Finance

1971 – 1975

Activities and Societies: Mensa

Magna Cum Laude



KENTUCKY STATE UNIVERSITY

Bachelor of Science, Accounting & Finance

1974

Continued.



University of South Alabama

Business

1971 – 1972



Franklin County HS

1967 – 1970

Show fewer education ^

Skills & endorsements

Forecasting · 78



Endorsed by John McGowan and 4 others who are highly skilled at this



Endorsed by 17 of Don's colleagues at Beam Suntory

Budgets · 54



Endorsed by Jim Gavin, CPA and 1 other who is highly skilled at this



Endorsed by 2 of Don's colleagues at Beam Suntory

SAP · 52

Jim Odom and 51 connections have given endorsements for this skill

Industry Knowledge

Financial Reporting · 34

Variance Analysis · 20

Business Planning · 18

Strategic Planning · 14

Account Management · 9

Change Management · 9

Manufacturing · 5

Corporate Finance · 5

Project Planning · 4

Inventory Management · 3

Mergers & Acquisitions · 3

Mergers · 2

Internal Controls · 2

Financial Planning · 2

Consolidation · 2

Strategic Financial Planning · 2

Managerial Finance · 22

Sarbanes-Oxley Act · 19

Accounting · 16

Budgeting · 13

Business Strategy · 9

Integration · 5

Internal Audit · 5

Analysis · 4

Finance · 4

Financial Analysis · 3

Account Reconciliation · 3

Planning · 2

ERP · 2

Outsourcing · 2

Budget Management · 2

SOX · 1

Tools & Technologies

Hyperion Enterprise · 5

Word · 2

Microsoft Office · 3

Excel · 1

Interpersonal Skills

Team Leadership · 8

Leadership · 6

Cross-functional Team Leadership · 5

Problem Solving · 2

Team Building · 6

Negotiation · 5

Contract Negotiation · 3

Other Skills ?

Process Improvement · 45

International Accounting · 3

Financial Management · 3

Financial Control · 2

Show less ^

Recommendations

Received (0)

Given (4)



Ravi Dhāreshwar

IT Executive – Helping
business use technology to
serve the customer better

March 27, 2016, Ravi worked with
Don in the same group

Ravi, Is an excellant IT Manager. He came in to a difficult situation and provided leadership that was lacking. Ravi had a plan and implimented in a very short period of time. The best IT Manager I've ever worked with. Congratulations on a great job at Roll Forming. Don Rodgers



Jenn Gerlach

Always looking for awesome
clients!

December 3, 2009, Don was a
client of Jenn's

Jenn, Worked with me on a video for my business. She did an excellent job and delivered an outstanding video.



Kenny Gregg

Chief Operating Officer at
Thrive Peak Inc

August 10, 2009, Kenny worked
with Don in the same group

Kenny has been a tremendous help in showing me how to build my business. I have benefited from his experience and assistance. Kenny is a true leader.



Mike Sutis, CPA

Project Lead at Alithya

January 15, 2009, Don managed
Mike directly

Mike is a true professional. He goes the extra mile to get you answers. He has great work ethics and has a balance of common sense. He would be a great addition to any organization.

Show less ^

Accomplishments

1 Project
US SAP/GSS



Interests



Mark Cuban
President
6,425,342 followers



E. & J. Gallo Winery
98,268 followers



Craft Distillers Network
864 members



Jessica Alba
Founder of The Honest Company
1,747,447 followers



Capital Group
147,107 followers



Diageo
1,061,962 followers

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With over 35 years of experience in the distilled spirits industry, Distilling Accounting - Rodgers Consulting helps you with your distillation projects. I am here to help you with your accounting and marketing needs. Make your dreams come true when you work with us!

Distilled Spirits Industry Services

Don Rodgers the manufacturer and corporate controller for the world's #1 Kentucky Bourbon company, Jim Beam. I am a one person company in the spirits industry, I provide strategic planning, and marketing and sales plans to new business ventures.

I provide customized accounting packages for distilling and bottling distilled spirits. I offer a variety of bulk costing and forecasting products.

- ☑ Bourbon
- ☑ Scotch
- ☑ Rum
- ☑ Vodka
- ☑ Whiskey
- ☑ Tequila
- ☑ Canadian



Clients

- ✓ The Southern Distilling Company
- ✓ Elevated Mountain Distilling Company
- ✓ Ghost Coast Distilling Company
- ✓ Rabbit Hole Distillery
- ✓ Bison Distillery
- ✓ Yours & Mine Distilling Company
- ✓ Brushy Mountain Distillery
- ✓ IJW Distillery
- ✓ RLB Distillery
- ✓ Belfour Distillery
- ✓ Bowmaker's Whiskey Company
- ✓ Ben Milam Distillery
- ✓ Flat Coat Craft Distillery
- ✓ GK Distillery
- ✓ Ewing Young Distillery
- ✓ Ponfeigh Distillery
- ✓ Reinhold Distillery
- ✓ Virginia Foothills Distillery



Planning Services

If you need assistance with your business plan, I will help you. I have got you and your business goals and objectives in our mind. You and all your business planning needs are in expert hands when you work with me. I will also help you file federal and the required state reports. If you are planning to start a business and need assistance, don't hesitate to contact me.

Contact

(<https://distillingaccounting.com/contact/>)

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DISTILLING AND Accounting Services



At Distilling Accounting – Rodgers Consulting, Don is dedicated to you and all your different accounting needs. I have assembled a team of experts to provide the back-office needs of your business. My goal is to make you our life-long happy customer.

Turnkey Solution Benefits

- ✓ Custom software for distilling industry provided by the established software company.
- ✓ All your payroll needs.
- ✓ Direct deposit.
- ✓ Reduce IT cost and risk with hosting solution.
- ✓ Employee benefit package.
- ✓ Fixed accounting fees agreed in advance and not dependent upon income level.
- ✓ 401k plan.
- ✓ Business insurances.
- ✓ Assist ABL loans.
- ✓ Government compliance.



Why Choose Us

- ✓ 35+ years' experience in the spirits industry controller.
- ✓ Turnkey back office solutions.
- ✓ A free no-obligation discussion about your business requirements.
- ✓ Partners who are experts in software, hosting, insurance, and 401k.
- ✓ Company forecasts.
- ✓ Training for your accounting staff.
- ✓ Business insurances.
- ✓ Assistance in government audits as requested.



Unusual Events

Don Rodgers has been involved in two fire claims and one flood during his career. Don has experience in unusual type of occurrences such as purchasing and selling aged goods, and selling new products.

If you have questions or special requests, just drop a line.

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Simplify your payroll with professional payroll services to handle all your requirements. Direct deposits are included. Call for pricing. We negotiated the group rates to reduce your cost.

Employee Benefits



Professional services to provide benefit package for your employees. Call for pricing.

POS Software



Purchase POS software for a gift shop or tour revenue. Call for pricing.

Insurance



Get knowledgeable insurance services, which are related to your unique distillation business needs.

Review Federal Excise Payments



We are familiar and experienced with government requirements.

Procurement Services

We provide forecast requirements for new barrels, grains, bottles, and ingredients. Our procurement products include new barrel supplier, distilling equipment, and bottles.

Broker New Distillation Purchases

Industry contacts that fulfill you new distillation requirements.

Broker Aged Production Sale

Industry contacts with aged spirits available.

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